

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after **March 19, 2009**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **March 17, 2009**.

BACKGROUND/OVERVIEW:

The conflict-of-interest provisions of the Political Reform Act (the “Act”) provide that “no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” (Section 87100). The Act further provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on, among other things, the official, a member of the official’s immediate family, or any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(a).) To implement these provisions, the Commission has adopted regulations specifying materiality standards to apply to business entities in which a public official has an economic interest to determine if a conflict of interest exists.

REGULATORY ACTION:

Amend 2 Cal. Code Regs. Section 18705.1:

Regulation 18705.1 defines materiality standards in terms of the size of a business entity by looking to whether the entity (i) is listed on the Fortune 500, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, (ii) meets a fixed dollar threshold for earnings before taxes or net income, or (iii) if not listed, nevertheless meets the listing requirements of any of the exchanges.

The proposed amendment would apply the same materiality standard used for Fortune 500 companies to companies that are as large as Fortune 500 companies but are not listed, primarily because they are not U.S. based companies. This would bring unity to the treatment of like-sized companies.

The Commission also proposes eliminating the standard used for companies that are not listed on any exchange but are eligible for listing. Listing requirements of the various exchanges change from time to time and current ones no longer track the language of the regulation. Eliminating this seldom used standard would streamline and clarify the materiality standards.

Finally, the proposed amendment would replace “net income” with “earnings before taxes” where “net income” is used to establish the size of a business entity in determining the applicable materiality standard. “Net income” is only used once (subdivision (c)(3), in describing the applicable materiality standard for companies not listed on NASDAQ), while

“earnings before taxes” is used throughout the regulation to set the materiality standard for various companies. Using a standard measure would simplify and clarify the regulation.

SCOPE:

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY: Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCES: The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

CONTACT: Any inquiries should be made to Valentina Joyce, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?id=351>.